

TEXAS TRANSPORTATION COMMISSIONALL Counties**MINUTE ORDER**

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ALL Districts

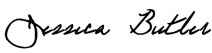
The Texas Transportation Commission (commission) finds it necessary to propose new §§15.140 – 15.147 relating to State Scenic Byways Program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §§15.140 – 15.147 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

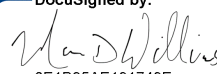
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

DocuSigned by:

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Director, Transportation Planning and
Programming Division

Recommended by:

DocuSigned by:

0E4B35AE101749E...

Executive Director

116078 August 31, 2021

Minute
Number

Date
Passed

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Proposed Preamble

The Texas Department of Transportation (department) proposes new §§15.140 - 15.147 concerning State Scenic Byways Program.

EXPLANATION OF PROPOSED NEW SECTIONS

Senate Bill No. 941, 87th Legislature, Regular Session, 2021, (SB 941) amended Transportation Code, Chapter 391, for the department to create plan, design, and establish a program for designating highways as State Scenic Byways. New §§15.140 - 15.145 add provisions that set forth how the department will implement the program.

New §15.140, Purpose, describes the purpose of the new subchapter.

New §15.141 Definitions, adds definitions for the subchapter.

New §15.142, State Scenic Byway Program, states that the state program works in conjunction with the national scenic byways program and establishes the requirements for a highway to be designated as a State Scenic Byway.

New §15.143, Eligible Entity, describes the eligible entities that are able to participate in the program. Any political subdivision is eligible. A community group may be approved by

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the department to participate. The section provides the
procedure for a community group to be approved.

New §15.144, Application Procedure, describes the application
procedure for an entity to request the designation of a highway
as a State Scenic Byway, the designation of a State Scenic Byway
as a National Scenic Byway, and an application for a national
scenic byway grant for a project on a State Scenic Byway.

New §15.145, Matching Funds, describes the matching fund
provisions under the program and states the statutory limitation
on the department's use of state funds. The section restates the
substance of Transportation Code, §391.256(b) (3) and (d).

New §15.146, Outdoor Advertising Prohibited, states that outdoor
advertising on a State Scenic Byway is prohibited. This
prohibition is required under Transportation Code, §391.256(f).

New §15.147, Removal of Designation, authorizes the department
to remove the designation of a State Scenic Byway if the roadway
no longer meets the requirements under Title 23, §162, United
States Code.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in
accordance with Government Code, §2001.024(a) (4), that as a

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1 result of enforcing or administering the rules for each of the
2 first five years in which the proposed rules are in effect,
3 there will be no fiscal implications for state or local
4 governments as a result of enforcing or administering the rules.

5
6 LOCAL EMPLOYMENT IMPACT STATEMENT

7 Jessica Butler, Transportation Planning and Programming Division
8 Director, has determined that there will be no significant
9 impact on local economies or overall employment as a result of
10 enforcing or administering the proposed rules and therefore, a
11 local employment impact statement is not required under
12 Government Code, §2001.022.

13
14 PUBLIC BENEFIT

15 Ms. Butler has also determined, as required by Government Code,
16 §2001.024(a)(5), that for each year of the first five years in
17 which the proposed rules are in effect, the public benefit
18 anticipated as a result of enforcing or administering the rules
19 will be clarity on how the department is incorporating the
20 requirements of SB 941 into its processes and conformity with
21 federal regulations.

22
23 COSTS ON REGULATED PERSONS

24 Ms. Butler has also determined, as required by Government Code,
25 §2001.024(a)(5), that for each year of that period there are no
26 anticipated economic costs for persons, including a state

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agency, special district, or local government, required to
comply with the proposed rules and therefore, Government Code,
§2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses,
micro-businesses, or rural communities, as defined by Government
Code, §2006.001, and therefore, an economic impact statement and
regulatory flexibility analysis are not required under
Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Butler has considered the requirements of Government Code,
§2001.0221 and anticipates that the proposed rules will have no
effect on government growth. Ms. Butler expects that during the
first five years that the rule would be in effect:

(1) it would create the State Scenic Byways Program, as
required by SB 941;

(2) its implementation would not require the creation of
new employee positions or the elimination of existing employee
positions;

(3) its implementation would not require an increase or
decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees
paid to the agency;

(5) it would not create a new regulation;

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(6) it would not expand, limit, or repeal an existing
regulation;

(7) it would not increase or decrease the number of
individuals subject to its applicability; and

(8) it may positively and not adversely affect this state's
economy.

TAKINGS IMPACT ASSESSMENT

Ms. Butler has determined that a written takings impact
assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §15.140 to §15.145, may be
submitted to Rule Comments, General Counsel Division, Texas
Department of Transportation, 125 East 11th Street, Austin,
Texas 78701-2483 or to RuleComments@txdot.gov with the subject
line "*Scenic Byway Rules*." The deadline for receipt of comments
is 5:00 p.m. on October 18, 2021. In accordance with
Transportation Code, §201.811(a)(5), a person who submits
comments must disclose, in writing with the comments, whether
the person does business with the department, may benefit
monetarily from the proposed rules, or is an employee of the
department.

STATUTORY AUTHORITY

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1 The new sections are proposed under Transportation Code,
2 §201.101, which provides the Texas Transportation Commission
3 (commission) with the authority to establish rules for the
4 conduct of the work of the department, and more specifically,
5 Transportation Code, §391.256(f), which requires the commission
6 by rule to prohibit outdoor advertising on a State Scenic Byway.

7
8 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
9 Transportation Code, §391.256.

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SUBCHAPTER L. STATE SCENIC BYWAYS PROGRAM

§15.140. Purpose. Transportation Code, Chapter 391, Subchapter I, requires the department to establish a State Scenic Byways Program. This subchapter sets forth the procedures for the program.

§15.141. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Transportation.

(2) National Scenic Byway--A roadway designated as a National Scenic Byway by the Federal Highway Administration under Title 23, §162, United States Code.

§15.142. State Scenic Byway Program.

(a) The state scenic byway program works in conjunction with the national scenic byways program, 23 U.S.C. Section 162, and guidance for that program from the federal highway administration.

(b) To be a State Scenic Byway, a highway must be described by Transportation Code, Section 391.252, and designated by the department as a State Scenic Byway under this subchapter.

§15.143. Eligible Entity.

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(a) To be eligible to participate in the state scenic byway program, an entity must be:

- (1) a political subdivision; or
- (2) a community group that is approved by the department.

(b) To be approved for participation in the program, a community group must submit to the department:

- (1) an application in the form prescribed by the department; and
- (2) information supporting the application, as required by the department.

(c) The department will send to a community group that applies under subsection (b) of this section notice of the approval or rejection of its application before the 60th day after the day on which the application and all required information is first received by the department.

§15.144. Application Procedure.

(a) State Scenic Byway Application. An eligible entity may submit to the department an application for the designation of a highway as a State Scenic Byway. In accordance with federal guidance, the department may require that a corridor management plan may be submitted with the application.

(b) Concurrence. Before the department may designate a highway as a State Scenic Byway, the applicant must obtain

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1 concurrence from each governmental entity that has jurisdiction
2 over the highway that is subject to the application.

3 (c) National Scenic Byway Applications. Subject to Federal
4 Highway Administration notice and after a highway is designated
5 as a State Scenic Byway, an eligible entity may submit to the
6 department:

7 (1) an application for designation of the State Scenic
8 Byway as a National Scenic Byway; and

9 (2) an application for a national scenic byway grant
10 for a project on the State Scenic Byway.

11
12 §15.145. Matching Funds. An eligible entity under the program
13 may pay for the costs of a project that are not covered by a
14 grant made under 23 U.S.C. Section 162. The department may use
15 money from the state highway fund for a project that receives a
16 grant made under 23 U.S.C. Section 162 only to satisfy the state
17 matching fund requirements for the grant.

18
19 §15.146. Outdoor Advertising Prohibited. In accordance with
20 Transportation Code, §391.256(f), and 23 U.S.C. Section 131(s),
21 outdoor advertising on a State Scenic Byway is prohibited.

22
23 §15.147. Removal of Designation. The department may remove a
24 state scenic byway designation if the department determines that
25 the highway no longer meets the criteria for designation under

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- 1 the national scenic byways program provided by 23 U.S.C. Section
- 2 162.